

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 GEORGE LESLIE VONTRESS,
4

5 *Petitioner,*

6 vs.

7 D.W. NEVENS, *et al.*,

8 *Respondents.*
9

No. 2:14-cv-01342-GMN-CWH

ORDER

10 Subsequent to petitioner's response to a show-cause order, on September 17, 2014, this court
11 dismissed this habeas petition without prejudice as wholly unexhausted (ECF #6). Judgment was
12 entered on that date (ECF #7). Now before the court is petitioner's motion for reconsideration, motion
13 to disqualify judge, and motion seeking clarification and judicial notice (ECF #s 10, 11, 12,
14 respectively). As discussed below, petitioner's motions are denied.

15 Where a ruling has resulted in final judgment or order, a motion for reconsideration may be
16 construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure
17 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*
18 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

19 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the
20 following reasons:

21 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
22 discovered evidence that, with reasonable diligence, could not have been
23 discovered in time to move for a new trial under Rule 59(b); (3) fraud
24 (whether previously called intrinsic or extrinsic), misrepresentation, or
25 misconduct by an opposing party; (4) the judgment is void; (5) the
judgment has been satisfied, released, or discharged; it is based on an
earlier judgment that has been reversed or otherwise vacated; or applying
it prospectively is no longer equitable; or (6) any other reason that
justifies relief.

26 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
27 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
28 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior

1 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
2 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
3 Rules of Civil Procedure provides that any “motion to alter or amend a judgment must be filed no later
4 than 28 days after entry of the judgment.” Furthermore, a motion under Fed. R. Civ. P. 59(e) “should
5 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
6 discovered evidence, committed clear error, or if there is an intervening change in the controlling law.”
7 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,
8 1255 (9th Cir. 1999).

9 This court dismissed the petition in this case upon concluding that it was clear that the federal
10 petition is wholly unexhausted (ECF #6, p. 4). Petitioner did not (and does not) contend that he in fact
11 had presented the claims in his federal petition to the Nevada Supreme Court. *Id.* The court discussed
12 and rejected petitioner’s three arguments that the exhaustion requirement should be excused: (1) that
13 he was subject to a malicious prosecution in bad faith; (2) that he is a layman untrained in the law; and
14 (3) that there was an absence of available state corrective process. *Id.* at 5-6.

15 Petitioner merely rehashes these arguments in his motion for reconsideration (ECF #10). He
16 fails to make any showing under either Rule 60(b) or 59(e) that the order dismissing the petition without
17 prejudice should be reversed. Accordingly, the motion for reconsideration is denied. Petitioner’s
18 motion to disqualify judge (ECF #11) is denied as factually frivolous, and his motion seeking
19 clarification and judicial notice (ECF #12) is denied as moot.

20 **IT IS THEREFORE ORDERED** that petitioner’s motion for reconsideration of the dismissal
21 of his petition without prejudice (ECF #10) is **DENIED**.

22 **IT IS FURTHER ORDERED** that petitioner’s motion to disqualify judge (ECF #11) is
23 **DENIED** as factually frivolous.

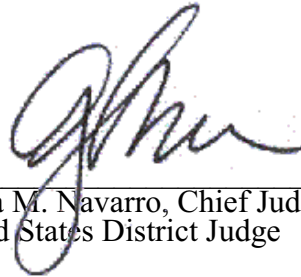
24 **IT IS FURTHER ORDERED** that petitioner’s motion seeking clarification and judicial notice
25 (ECF #12) is **DENIED** as moot.

26 **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein by
27 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits
28 by number. The CM/ECF attachments that are filed further shall be identified by the number or

1 numbers of the exhibits in the attachment. Courtesy copies (hard copies) shall be forwarded—for this
2 case—to the staff attorneys in Reno.

3 **DATED** this 13th day of May, 2015.

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Gloria M. Navarro, Chief Judge
United States District Judge